

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD¹
REGION 20

CALIFORNIA ALMOND GROWERS
EXCHANGE d/b/a BLUE DIAMOND
GROWERS

Employer

and

Case 20-RC-18203

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION, LOCAL 17

Petitioner

REPORT ON OBJECTIONS, ORDER CONSOLIDATING
CASES, AND NOTICE OF HEARING

Pursuant to a *Stipulated Election Agreement* approved by the Acting Regional Director on October 10, an election by secret ballot was conducted on November 19 among the employees in the following appropriate collective-bargaining unit:²

All full time and regular part time production and maintenance employees employed by the Employer at its Sacramento, California facility including all the job titles described in Attachment 1 to this stipulation; excluding all salaried employees, professional employees, managerial employees, office clerical employees, dispatchers, guards, temporary employees, and supervisors as defined by the Act including leads.

Upon conclusion of the ballot count on November 19, each of the parties received a copy of the official *Tally of Ballots* showing the following results:

¹ Also referred to as Board.

² All dates refer to 2008 unless otherwise noted.

Approximate number of eligible voters	510
Number of void ballots	1
Number of votes cast for Petitioner.	142
Number of votes cast against participating labor organization.	353
Number of valid votes counted	495
Number of challenged ballots	7 ³
Number of Valid votes counted plus challenged ballot	502

The challenged ballots were insufficient in number to affect the outcome of the election.

On November 26, Petitioner⁴ timely filed *Objections to the Election* which state verbatim as follows:

Objections to Employer Interference with Employee Fee Choice Prior to the Election:

During the critical period prior to the election, BDG interfered with employee free choice in several ways:

1. Within 24 hours of the opening of the polls, a number of BDG supervisors held captive audience meetings with employees in their departments.
2. On Monday, November 17 and Tuesday, November 18, BDG held at least five captive audience meetings in the Blue Diamond theater. These meetings were attended by all employees, in groups of approximately 80 to 100. BDG supervisors and consultants were dispersed among the employees in the audience. BDG Operations Manager Bruce Lish (who until recently managed BDG's unionized facility in Oregon) spoke through a public address system from what appeared to be a prepared text. Lish:
 - a. promised to improve wages and working conditions within a year if employees voted against the Union;
 - b. threatened to obstruct negotiations and refuse to improve wages, benefits or working conditions if employees voted against the Union;

³ Challenged ballots were insufficient in number to affect the outcome of the election.

⁴ Also referred to as Union.

c. predicted, with no basis in fact, that almond growers would withdraw from the Blue Diamond cooperative if employees voted for the Union; and

d. portrayed an economic strike and permanent replacement as an inevitable consequence of a Union election victory.

3. BDG supervisors and outside consultants hired by BDG interrogated employees regarding their Union sympathies, solicited employee grievances and promised to remedy them if employees were to vote against the Union.

4. BDG provided assistance to an anti-Union employee group by (a) permitting anti-Union employees to demonstrate at the gate to the BDG facility on paid work time; (b) supplying the anti-Union employees with materials to make picket signs, and (c) permitting employees to store anti-Union picket signs in their workplace, while denying the same opportunities to pro-Union employees. BDG permitted anti-Union employees to post signs inside the workplace, but tore down signs posted by pro-Union employees.

5. On November 14 and 18, 2008, BDG engaged in surveillance of pro-Union employees rallying outside BDG's facility.

Objections to Employer Interference with Employee Free Choice During the Election:

During the election, BDG interfered with employee free choice by permitting its supervisors to release employees to vote in violation of the schedule and procedure the parties had agreed upon at the pre-election conference the night before the election.

During the 8:00 a.m. to 12:00 noon polling period, BDG supervisors in many departments, including Center Warehouse, North Warehouse, Inshell and Sanitation, released employees to go and vote before the Board agent and observers arrived – in most cases so far in advance that employees had been released, voted, and returned to

work by the time the Board agent and the election observers arrived. The Union is informed and believes that BDG management engaged in electioneering and surveillance when the employees were released.⁵

BDG also granted anti-Union employees preferential access to various areas of the facility during the election, and transported several anti-Union employees to the polls in company vehicles.⁶

Investigation and Analysis:

I caused an investigation to be conducted into Petitioner's *Objections*. On January 27, 2009, Petitioner sought to withdraw Objections 1 and 7, and I hereby approve Petitioner's request.

I recommend that the Board overrule Objections 2b, 4a, 5, and 6. With respect to Objection 2b, Petitioner furnished no evidence that Bruce Lish threatened to obstruct negotiations or to refuse to improve employee wages and benefits if the Union were voted in. With respect to Objection 4a, the Union furnished no evidence that anti-union employees were permitted to demonstrate at the employer's entrance on paid work time. Regarding Objection 5, the Board has held that "an employer's mere observation of open, public union activity on or near its property does not constitute unlawful surveillance." *Houston Garment Company*, 279 NLRB 565, 566-67 (1986). The Union provided no evidence to support a conclusion that the Employer's actions rose to the

⁵ This paragraph hereafter referred to as Objection 6

⁶ This sentence hereafter referred to as Objection 7.

level of to illegal surveillance rather than amounting merely to incidental and legal observation. With regard to Objection 6, during the pre-election conference on the day prior to the election, the parties and Board agents discussed a procedure to release employees to vote. On the basis of that discussion, one of the Board agents typed a brief script in English and Spanish announcing her position with the Board, that the polls were open, and that employees might then vote if they wished to do so. The Board agent read that script to the parties and they apparently approved of it, but there was no requirement in the *Stipulated Election Agreement* or elsewhere that it be read to all voters and the parties did not sign off on it. There is evidence that supervisors and leads, in some isolated instances, may have released employees to vote from a particular department prior to the arrival of the Board Agent to read the script, but there is no evidence that such release violated a material and binding agreement between the parties, or that it in any way affected the fairness of the election.

On the other hand, the investigation disclosed that Objections 2a, 2c, 2d, 3, 4b, and 4c raise substantial and material issues of fact that can best be resolved through a hearing. Because these issues are related and similar to allegations in the *Order Consolidating Cases, Consolidated Complaint and Notice of Hearing* in Cases 20-CA-34199, 20-CA-34200, and 20-CA-34201 that I issued on January 23, 2009, or to an allegation in the *Amendment to Consolidated Complaint* in those matters that I issued on February 26, 2009, I have concluded that the purposes of the Act will best be effectuated by considering Objections 2a, 2c, 2d, 3, 4b and 4c and the alleged unfair labor practices in a single consolidated hearing before an Administrative Law Judge. These objections

and the allegations of the complaint shall be considered to the extent that they bear on the validity of the election. *White Plains Lincoln-Mercury, Inc.*, 288 NLRB 1133 (1988).

Accordingly, pursuant to Section 102.33 and 102.72 of the Board's Rules and Regulations, Series 8, as amended, I HEREBY ORDER the consolidation of Cases 20-CA-34199, 20-CA-34200, 20-CA-34201, and 20-RC-18203 for the purpose of a hearing before an Administrative Law Judge.

I FURTHER ORDER that at the same time and place as the hearing in Cases 20-CA-34199, 20-CA-34200, and 20-CA-34201, currently scheduled for 9:00 a.m. on March 25, 2009, and consecutive days thereafter, a hearing will be conducted at the U.S. Post Office and Courthouse, 801 "I" Street, Room 484 in Sacramento, California, before a duly designated Administrative Law Judge of the National Labor Relations Board, at which time and place the parties will have the right to appear in person, or otherwise, to give testimony, and to examine and cross-examine witnesses with respect to the issues that I identified above as raising substantial and material issues of fact.

I HEREBY REQUEST that the Administrative Law Judge designated for the purpose of conducting the hearing prepare and cause to be served upon the parties a report containing resolution of credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the *Objections*, and on other conduct bearing on the validity of the election. Within the time prescribed by the Board's Rules and Regulations, any party may file with the Board in Washington, DC. an original and eight copies of exceptions thereto. Immediately upon the filing of such exceptions, the party

filing same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. If no exceptions are filed thereto, the Board may decide the matter forthwith upon the record or may make other disposition of the case.

DATED AT San Francisco, California this 5th day of March 2009.⁷

/s/ Joseph P. Norelli

Joseph P. Norelli, Regional Director
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, California 94103

⁷ Under the provisions of Section 102.69 of the Board's *Rules and Regulations*, within fourteen days a party may file with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570, exceptions to my recommendation that the Board overrule Objections 2b, 4a, 5, and 6. Alternatively, exceptions may be submitted by electronic filing. See the Attachment provided in the initial correspondence in this case or refer to OM 05-30 and OM 07-07, which are available on the Agency's website at www.nlrb.gov, for a detailed explanation of requirements which must be met to submit documents electronically to the Board and Regional Offices. Guidance may also be found under E-Gov on the Board's website. . Exceptions may not be filed by facsimile. Exceptions to my recommendation to overrule Objections 2b, 4a, 5, and 6 must be received by the Board in Washington, D.C. by March 19, 2009.

Under the provisions of Section 102.69(g) of the *Rules*, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director and which is not included in this Report, is not part of the record before the Board and will not be considered unless appended to the exceptions or opposition thereto which the party files with the Board. Failure to append copies of evidence timely submitted to the Regional Director shall preclude a party from relying upon such evidence in any subsequent related unfair labor practice proceeding.